the rejection. The Examiner's attention is directed to MPEP 706.02(f)(1), which is the procedure for determining whether a reference is a proper one under 35 U.S.C. § 102(e). The PCT application which serves as the basis for the Cavallucci publication was not published in English and the aforementioned MPEP section precludes reliance on this publication as prior art under 35 U.S.C. § 102(e). Cavallucci is only prior art based on its publication date, which is after the PCT filing date of this application.

Notwithstanding the error in the manner in which Cavallucci is applied, Applicants submit that the rejection is in error for the simple reason that Cavallucci does not teach each and every feature of claim 1 and anticipation cannot occur. As the Examiner knows, a rejection based on 35 U.S.C. § 102 requires that the prior art teach each limitation of the claim, either expressly or implicitly. It is the failure of Cavallucci to teach the aforementioned method step/device component regarding measuring of **reflected** light as well as the other steps/components that link this measurement to object position determination that requires withdrawal of the rejection.

First, the rejection provides no objective basis in terms of identifying specific language in Cavallucci to support the contention that the method of claims 1 and 2 and the device of claims 13 and 14, wherein the reflected light is measured and used for object position determination is present in Cavallucci. The Examiner only parrots the claim language and references paragraph [0066] of Cavallucci to support the rejection. This alone is

insufficient to make a *prima facie* case of anticipation since 37 C.F.R. §1.104(c)(2) requires the Examiner to clearly explain the pertinence of each reference if not apparent. Applicants submit that the cited reference is complex and the mere reference to a paragraph in the cited reference is insufficient to meet the standard set forth in Rule 1.104.

Putting aside the technical objections made above, a close review of paragraph [0066] of Cavallucci demonstrates that this reference does not teach a step/device that "measures the quantity of light reflected by the object when the object is illuminated" and determining the position of the object based on this measurement as is required in claims 1, 13, and 14. Likewise, Cavallucci fails to teach the device of claims 13 and 14, which requires the same measurement and object position determination.

Referring now to paragraph [0066] of Cavallucci, the reflected quantity of light is not only not used for object position determination but is ignored in order to detect the position of the article using only signals delivered by sensors, e.g., P4-P6, see Figure 4, that are facing the switched on light emitting diodes, e.g., L1. In this regard, Cavallucci states:

> ... when the light-emitting diode L1 is switched on ..... the output signals from the sensors P1 to P3 are constituted essentially by noise when the article to be detected .... reflects or back-scatters little. In order to ensure that the processing of data that results from converting the signals from the sensors P1 to P6 is not "polluted" with "noisy data" coming from the sensors P1 to P3, the corresponding signals and/or data are eliminated. Signals delivered by P4 to P6 are selected as useful.

From this description, the only reasonable conclusion to draw from the disclosure of Cavallucci is that the detection of the position of objects is based on a light transmission principle, not a reflection of light as is the case for method claims 1 and 2 and device claims 13 and 14.

Based on the teachings of paragraph [0066] of Cavallucci, it is factual error to conclude that the claimed steps/device components regarding determining the position of the object using measurement of reflected light are present in this reference. This means that any rejection based on 35 U.S.C. § 102 is improper and could not be sustained on appeal.

Lacking a basis to allege anticipation, the Examiner can only rely on 35 U.S.C. § 103(a) to further reject the claims. However, since Cavallucci and the invention are fundamentally different. With this, the Examiner would have to have some other reference or reasoning to modify Cavallucci so as to arrive at the invention as defined in claims 1, 2, 13, and 14. There is no just basis in Cavallucci or elsewhere to make such a modification, and a rejection based on 35 U.S.C. § 103(a) cannot be legitimately made.

Since Cavallucci does not establish a *prima facie* case of anticipation or obviousness against claims 1, 2, 13, and 14, the rejection must be withdrawn and these claims along with their respective dependent claims must be passed onto issuance.

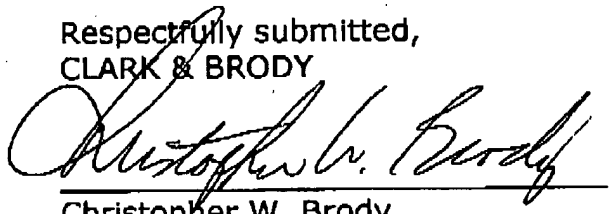
If the Examiner believes that an interview would be helpful in expediting the allowance of this application, the Examiner is requested to telephone the undersigned at 202-835-1753.

The above constitutes a complete response to all issues raised in the Office Action dated May 28, 2008.

Again, reconsideration and allowance of this application is respectfully requested.

Please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,
CLARK & BRODY



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